CITIZENS HERE.

Rights of Hawaiian Chinese Fully Defined.

(Staff Correspondence.)

WASHINGTON, Jan. 27.—Full and complete is the opinion of the Attorney General of the United States upon the question of the citizenship of Chinese who were citizens of Hawaii prior to the passage of the annexation resolution, and who have not since that time taken any steps to abandon that citizenship. The brief mention of the fact that this was the decision of the Department of Justice does not give the fullest view of the reasoning by which the Attorney General arrives at that conclusion, and for that reason the decision is appended.

While the opinion of the Attorney General is based upon that of the Solicitor of the Treasury, it goes into the subject fully and as well will be found later to have bearing upon other questions which will be argued as coming under the general laws of the United States and which it may be held should apply as the Constitution goes with the flag despite the action of Congress. The decisions in these cases which were rendered by the Solicitor have not been made public, the publication in the Advertiser being the only publicity given to them so far. Reference to that opinion will show how completely the Attorney General has gone in his opinion that the enactment by Congress has become the paramount law of the land. The decision of the department, in line with the opinion herewith given, goes forward now to the Collector of Customs and will be followed by him in his subsequent rulings in such cases. This ruling in full is as follows:

Department of Justice,
Washington, D. C., Jan. 16, 1901.

The Secretary of the Treasury.

Sir: Your letters of December 6 and December 10 request my opinion upon the following questions of law relating to actual cases arising in the administration of your Department:

One—Whether a person born in the Hawaiian Islands in 1885 of Chinese parents who are laborers, and taken to China with his mother in 1890, is entitled to reenter the Territory of Hawaii, where his father still resides?

Two—Whether the wife and children of a Chinese person, who was naturalized in 1887 in Hawaii and still resides there, are entitled to enter that Territory "by virtue of the citizenship" of the husband and father?

In the first case the Chinese person claims the right to enter the Territory of Hawaii because he is a citizen of the United States and of the Territory of Hawaii by reason of his birth in that Territory; and in the second case the Chinese persons claim the same right because the husband and father is a citizen of the United States and of the Territory of Hawaii by force of his naturalization under Hawaiian laws. The exact question, then, upon which I have the honor to deliver to you my opinion is whether a Chinese person, born or naturalized in the Hawaiian Islands prior to the annexation of that Territory, is a citizen of the United States; for I conceive that there can be no doubt under existing law of the right of a citizen of the United States and of his wife and children to enter freely the Territory of Hawaii.

The Joint Resolution of July 7, 1898 (30 Stat., 750), providing for the annexation of the Hawaiian Islands, contains the following paragraph:

"There shall be no further immigration of Chinese into the Hawaiian Islands except under such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands."

The Constitution of the Republic of Hawaii (sec. 1, art. 17) provided that "all persons born or naturalized in the Hawaiian Islands and subject to the jurisdiction of the Republic, are citizens thereof." The Act of April 30, 1900 (31 Stat., 141), providing a government for the Territory of Hawaii, declared (sec. 4) that "all persons who were citizens of the Republic of Hawaii on August 12, 1898, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii." This discussion grants, as I understand it, that the two Chinese persons whose personal or family rights are in question, were citizens of the Republic of Hawaii on the crucial date, and does not require me further to scrutinize and to determine their status under the constitution and laws of that republic.

I lay aside important questions suggested by the inquiry, which may hereafter arise, but are not now material, affecting the status and rights of various classes of Chinese persons now born or naturalized in the Hawaiian Islands prior to August 12, 1898, who may seek to enter Hawaii or desire to remain there, or who may seek to enter the United States from that Territory. Such questions, when they arise, will invoke inter alia the Joint Resolution from which I have quoted, the laws forbidding the naturalization of Chinese (sec. 14, Act of May 6, 1882, 22 Stat., 58; art. IV of the Treaty with China of 1894, 28 Stat., 1210; secs. 5, 7, 100 of the Act of April 30, 1900, supra), and the permissive and restrictive provisions of sec. 101 of the Act last cited relative to "certificates of residence" for Chinese in the Hawaiian Islands. As to these matters I express no opinion, because we are concerned only with the definite class of Chinese persons who were born or naturalized in the Hawaiian Islands prior to August 12, 1898.

The inquiry involves both the power and intention of Congress in dealing with the subject. As to the power—in Wong Kim Ark vs. United States, 169 U. S., 649, decided several months before the adoption of the resolution for the annexation of Hawaii, which deliberately determined that a child, born in the United States of Chinese parents who have a permanent domicile in this country, becomes at birth a citizen of the United States, the court re-stated the inherent right of the United States, acting through Congress, to exclude or expel aliens; and, in a review of the exercise by Congress of the constitutional power "to establish a uniform rule of naturalization," again recognized as constitutional the denial of naturalization to Chinese persons, and, on the other hand, showed that through treaty or by authority of Congress certain classes of persons may be declared to be citizens.

"It is true that Chinese persons born in China cannot be naturalized like other aliens by proceedings under the naturalization laws; but this is for want of any statute or treaty authorizing or permitting such naturalization. . . . Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws" (citing Fong Yue Ting vs. United States, 149 U. .S, 716, and in re Gee Hop, 71 Fed. Rep., 274). . . . A person born out of the jurisdiction of the United States can only become a citizen by being naturalized either by treaty, as in the annexation of foreign territory, or by authority of Congress exercised either by declaring certain classes of persons to be citizens . . . or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts. . . . The fourteenth amendment, while it leaves the power where it was before, in Congress, to regulate naturalization, etc. (169 U. S., 701, 702, 703).

In American Insurance Co. vs. Canter, 1 Pet., 511, 542, Chief Justice Marshall, quoting the sixth article of the treaty of 1819 with Spain, which admitted the inhabitants of the Spanish territory of Florida "to the enjoyment of the privileges, rights and immunities of the citizens of the United States," says:

"This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation."

It is to be observed that the power "to establish a uniform rule of naturalization," vested in Congress by clause 4, section 8, article I of the Constitution of the United States, is an affirmative grant by virtue of which Congress was authorized to displace conflicting State laws on the subject. This grant cannot properly be construed to limit the power of Congress, under the authority "to make rules and regulations respecting the territory belonging to the United States," to provide diversely for individual or collective naturalization in territories acquired, with a view to the special circumstances or needs of each territory. Upon this principle proceeds the express application to organized Territories (sec. 2165, Revised Statutes) of the uniform rules respecting individual naturalization through the courts. And on the same principle depend the varying laws respecting both individual and collective naturalization which have been enacted for certain territories and classes of people (post, and sec. 100 of the Hawaiian Act cited). In other words, our ordinary naturalization laws are of general but not universal application.

It never seems to have been supposed that the power to establish a uniform rule of naturalization meant anything more than that individual applications to become citizens by proceedings in judicial tribunals should rest upon uniform authority and should follow the same forms everywhere in the United States, and in the Territories when the rules should be extended and applied to them by Congress. It has never been asserted that the language of this grant of power affected the right of Congress to exclude or to admit certain classes of aliens by special or collective provisions; or the right of the treaty-making power to stipulate for the same results. (See, for a stipulation denying naturalization, article IV of the Chinese treaty of 1894 ut supra).

Accordingly, we find that the power of collective naturalization has been frequently exercised by the President and Senate; in the treaty for the cession of Louisiana, which agreed to admit the inhabitants to the rights of citizens of the United States (art. III, Treaties and Conventions between the United States and other Powers, p. 331; The Mayor of New Orleans vs. Armas, 9 Pet., 223; opinion of Justice Catron in Dred Scott vs. Sandford, 19 How., 393, 525); in the treaty with Spain of 1819 referred to in American Insurance Co. vs. Canter, supra; in the treaty of 1848 with Mexico (article VIII, Treaties and Conventions, etc., pp. 681, 685; People vs. Naglee, 1 Cal., 232), which gave Mexican citizens in the ceded territory the right of election to become citizens of the United States, and made continuance in the Territory after a year the exercise of that election; and in the Alaska treaty of 1867 (art. III, Treaties and Conventions, etc., pp. 939, 941), which conferred a similar right upon the inhabitants of Alaska, excepting uncivilized native tribes.

Congress, also, has in many instances carried this power into effect. In Boyd vs. Thayer, 143 U. S., 135, holding that Congress has the power to effect a collective naturalization on the admission of a State into the Union, by reason of the necessary adoption as citizens of the United States of those whom Congress makes members of the political community, the court says:

"Congress, in the exercise of the power to establish a uniform rule of naturalization, has enacted general laws under which individuals may be naturalized; but the instances of collective naturalization by treaty or by statute are numerous." (Id., 162.)

And, after reviewing such instances, the court cites the Act of February 8, 1887 (24 Stat., 388), making by its terms "every Indian situated as therein referred to a citizen of the United States."

"By the annexation of Texas, under a joint resolution of Congress of March 1, 1845, and its admission into the Union on an equal footing with the original States, December 29, 1845, all the citizens of the former republic became, without any express declaration, citizens of the United States" (citing 5 Stat. 798; 9 Stat., 108, and other authorities). (143 U. S., 169.)

Compare also the case of Osterman vs Baldwin, 6 Wall., 116, which determined that the Act of admission of Texas into the Union was an act of naturalization operating retrospectively.

And, finally, the Act organizing the Territory of Oklahoma, May 2, 1890, 26 Stat., 81), by its 43d section, provided, on the one hand, that a member of an Indian tribe in the Indian Territory might apply to the United States Court to become a citizen of the United States; and, on the other hand, that a certain Indian Confederation, accepting their lands in severalty, and selecting their allotments, "shall be deemed to be, and are hereby declared to be, citizens of the United States."

With respect to the intention of Congress in the present case, I cannot conceive that there is any doubt. The language of the Hawaiian Act (sec. 4) is that "all persons who are citizens of the Republic of Hawaii on August 12, 1898, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii." This language is positive and unqualified and leaves nothing to construe. Congress knew the situation in the Hawaiian Islands as well as the situation in this country, and understood the laws of the former republic which were continued, repealed, or subjected to amendment, respectively.

It is worthy of remark in this connection that sec. 2 of the bill to provide a government for Porto Rico, as introduced, declared that all the inhabitants of that island, with a certain qualification and exception, "shall be deemed and held to be citizens of the United This provision was stricken out (see sec. 7 of the Act, 31 Stat., 77, 79) before the bill became law. But in the Hawaiian case Congress, after annexation, admitted the Islands as a Territory, established a Territorial government, and did not withhold or limit the privilege of citizenship, which was within its competence to do, but expressly granted that privilege to all persons who were citizens of the Republic of Hawaii on the date fixed. Congress said a very plain thing, and must be understood to have meant what it said.

In consideration of the foregoing authorities and reasoning, I am unable to agree with the conclusions upon this subject which the Solicitor of the Treasury expresses in his opinions of September 1 and December 4, 1900. The repugnancy which the Solicitor sees between sections 4 and 101 of the Hawaiian Act disappear, as he himself suggests, upon the evident construction that section 101 applies and was intended to apply only to those Chinese who were not citizens of the Republic of Hawaii on August 12, 1898. In my opinion, considerations drawn from the general Chinese exclusion policy of the United States, leading to the prepossession that this grant of privilege is difficult to conceive or impossible to suppose, may not justly be invoked to support a persuasion that Congress did not intend "to admit to the full rights of citizenship a class of Chinese persons in a distant land who, if they had been domiciled in our midst, could under no circumstances ever have become citizens of the United States." Nevertheless, this is precisely what Congress did. And it must be observed, on the suggestion just quoted, that while such Chinese persons being born in China would not have been entitled to naturalization in this country, on the other hand, if born in the United States, under a status as defined in the Wong Kim Ark decision, they would have been citizens of the United States by birth through the force of that decision.

I do not think that the plain letter and meaning of the statute may be overthrown by the reasoning upon which the Solicitor of the Treasury relies, and I therefore answer both your questions in the affirmative, assuming it to be conceded, however, on the facts stated by you, that the Chinese persons in question, born and naturalized respectively in the Hawaiian Islands, were in fact citizens of the Republic of Hawaii, under the constitution and laws thereof, on August 12, 1898, and have not since that date in any way abandoned or lost their rights as such.

I return herewith the inclosures of your letter.

Very respectfully,
JOHN W. GRIGGS.
Attorney General.